

FR
EA03-009

Dehgh Alliance Society
P.O. Box 256,
Fort Simpson, NT X0E 0N0

FACSIMILE COVER

DATE: Aug 12/05

PAGES: 6 + Cover

TO: Honourable Andy Scott
Minister of INAC

FROM: Keyra Norwegain ^{President}
David Moses ^{Member}
Dehgh Alliance Society

FAX NO.: (613) 996-995

RE:

Environmental Assessment of Imperial Oil
Deh Cho Winter Geotechnical Program

Fax - cc. Gabrielle MacKenzie Scott
Chair, MUZ TRB 766-7074

- David Livingstone
Director, R.R. & E

- Stéphane Dion
Minister, Environment Canada

- Honourable Geoff Regan
Minister Fisheries & Oceans Canada

- Honourable Michael Hiltenberger
Minister S & NR GNWT

- Grand Chief Herb Norwegain
Dehcho First Nations

Respectfully,

Phone: (867) 695-3550
FAX: (867) 695-3890

Dehghah Alliance Society
P.O. Box 256
Fort Simpson, NT X0E 0N0

Aug. 4, 2005

The Honourable Andy Scott
Minister of Indian and Northern Affairs Canada
10 Wellington Street
Hull, Quebec K1A 0H4

Re: Environmental Assessment of Imperial Oil's Dehcho Winter Geotechnical Program

On February 10, 2005, the Mackenzie Valley Environmental Impact Review Board (MVEIRB) issued its *Report of Environmental Assessment and Reasons for Decision on Imperial Oil Resources Ventures Ltd.'s Deh Cho Geotechnical Program (EA 03-009)*.

On June 3, 2005, Imperial sent you a letter detailing their concerns with the content and recommendations within the MVEIRB's report. That letter was an attempt by Imperial to circumvent the rules of procedural fairness and improperly influence your use of discretion. We expect that you will properly not consider Imperial's letter when reaching a decision. However, in the event that you do consider Imperial's letter, the DAS has no choice but to respond to it.

Imperial Statements

Prior to reviewing the individual measures, we want to address some statements made by Imperial in their covering letter.

- 1) "It is our view that the evidence considered by the MVEIRB during the environmental assessment does not support a conclusion that the program would cause significant adverse impacts on the environment."

Imperial's opinion on, and disagreement with, the MVEIRB's conclusion is irrelevant. As the Federal Minister under the *Mackenzie Valley Resource Management Act (MVRMA)*, your responsibility and authority is limited to accepting, rejecting or modifying those measures applied by the MVEIRB to address their conclusions. The Federal Minister and Responsible Ministers can question whether or not the recommended measures appropriately address the MVEIRB's conclusions but the *MVRMA* does not grant the Federal Minister and Responsible Ministers with any authority to re-evaluate or alter the MVEIRB's conclusions on the existence, probability or significance of project impacts. Any modification of the MVEIRB's measures on the basis that the Federal Minister or the Responsible Ministers do not agree with the MVEIRB's impact conclusions would be a violation of the delegated responsibilities under the *MVRMA*.

- 2) Imperial disagrees with the MVEIRB's conclusion regarding flaws in Imperial's methodology for wildlife impact predictions.

As before, Imperial's opinion on this matter is irrelevant and the MVEIRB's conclusions on Imperial's impact assessment methodology are not subject to re-evaluation or alteration by the Federal Minister or the Responsible Ministers.

- 3) "... Imperial has concluded that the proposed geotechnical investigation program could not be carried out if the Measures and Suggestions recommended by the MVEIRB were adopted.

Phone: (867) 695-3550
Fax: (867) 695-3890

Page 1 of 4

Dehghah Alliance Society
P.O. Box 256
Fort Simpson, NT X0E 0N0

While Imperial supports some of the recommended Measures, other measures would preclude executing the program..."

The MVEIRB had not just a responsibility, but also a requirement, to impose measures that addressed the potential impacts of this project. In evaluating the MVEIRB's measures, the Federal Minister and the Responsible Ministers are restricted to an evaluation of the appropriateness of the measures to address the MVEIRB's conclusions.

The *MVRMA* requires the imposition of measures to address project impacts. If Imperial is unwilling to complete the project with the imposition of such necessary measures, then that is a business decision that Imperial is free to make but it is not a factor that can be considered by the Federal Minister and Responsible Ministers in making your decision.

Any modification of the MVEIRB's measures by the Federal Minister and the Responsible Ministers to address Imperial's perceived impacts on the project would be beyond the scope of the authority provided by the *MVRMA* to the Federal Minister and the Responsible Ministers.

- 4) "Finally, Imperial is concerned with the prospect of the Minister's approval of a report containing Measure #13 and Suggestions #5, #6 and #7, which if adopted, would have significant adverse impacts on the Mackenzie Gas Project."

As before, the impacts of the MVEIRB's measures on the project are not factors for the Federal Minister or the Responsible Ministers to consider. Any modification of the MVEIRB's measures by the Federal Minister and the Responsible Ministers to address Imperial's perceived "significant adverse impacts" on the project would be beyond the scope of the authority provided by the *MVRMA* to the Federal Minister and the Responsible Ministers.

Recommended Measures

Imperial made incorrect statements in relation to Measures 10 and 13, which require the following responses from the DAS.

Measure 10

In order to prevent significant adverse cumulative economic and social impacts on communities in the Deh Cho region related to the Imperial Deh Cho Geotechnical Program and reasonably foreseeable future developments along the proposed Mackenzie Gas Project pipeline corridor, the DAS and Imperial must present the MVLWB with evidence of progress towards Access and Benefits Agreements between Imperial and the five DAS member communities affected by the Imperial Deh Cho Geotechnical Program, before Imperial receives any licenses and permits. In the case of a disagreement, whether such progress has been made is to be determined by INAC.

Imperial Position

Imperial is unaware of the legal basis for requiring an Access Agreement with First Nations in the Deh Cho region. Such a requirement is inconsistent with the May 2003 Interim Measures Agreement signed by the Deh Cho First Nations, the federal government and the territorial government. Further, Imperial is unaware of the legal basis that would provide for the Mackenzie Valley Land and Water Board to assess evidence of progress towards Access and Benefits Agreements.

Dehghah Alliance Society
P.O. Box 256
Fort Simpson, NT X0E 0N0

DAS Response

The legal basis for the MVEIRB imposing this measure is *MVRMA* Section 128(1)(b)(ii). No other legal basis is required. There is no legislative or regulatory limit on the MVEIRB's discretion in developing its measures that excludes the requirement for a project to have an Access Agreement in place with affected communities.

Nothing in the Deh Cho Interim Measures Agreement (IMA) prevents Imperial from negotiating Access Agreements with the affected Dehcho communities. As such, Imperial was incorrect in stating that Measure 13 is inconsistent with the IMA. The matter of Access Agreements was simply not addressed in the IMA. That does not prevent Access Agreements from being put in place for this project, as is desired by the Dehcho communities and accepted as necessary by the MVEIRB.

The legal basis for the MVLWB enforcing this measure is *MVRMA* Section 130(5), which requires the regulatory authority, in this case the MVLWB, to conform to the MVEIRB's decision.

Measure 13

In order to prevent significant adverse social and cultural impacts on the people of the Pehdzeh Ki First Nation, no land use activities for geotechnical sites within 3 km of either bank of the Blackwater River and within 15 linear kilometers upstream (east) of where the Blackwater River meets the Highway 1 winter road are to be authorized by the MVLWB. The sole exception to this is the proposed Blackwater River pipeline crossing site, which may only be investigated without new access.

Imperial Position

This measure, if implemented, would be a major revision to the Deh Cho Interim Land Withdrawal Agreement between Canada and the Deh Cho First Nation. The implications of implementing this measure and the precedent it would establish for ad hoc revisions, would have serious consequences for the subsequent Mackenzie Gas Project.

DAS Response

This Measure has no affect upon, and is not affected by, the Deh Cho Interim Land Withdrawal Agreement (ILWA). The Dehcho did not give up their right to, on a case-by-case basis, protect land that was not withdrawn under the ILWA and companies do not have the right to develop the non-withdrawn land as they see fit.

Further, the ILWA was never intended to address all land protection issues in the Dehcho. In particular, it did not address any lands in the PKFN territory of the Dehcho because, at the time the ILWA was negotiated, PKFN was engaged in an effort to use the Protected Areas Strategy to protect sensitive areas within PKFN traditional territory. As a result of the failure of the PAS, Canada and the Dehcho First Nations (DFN) have agreed (in the Settlement Agreement recently signed to end the DFN's litigation in connection with the Joint Review Panel) to negotiate land withdrawals in the PKFN area, including the Blackwater area, in order to complete the ILWA. As with the existing ILWA, the land withdrawals for the PKFN area will provide for a pipeline study corridor.

**Dehgh Alliance Society
P.O. Box 256
Fort Simpson, NT X0E 0N0**

By allowing Imperial to proceed with studying the potential pipeline river-crossing site on the Blackwater River, the Dehcho are fulfilling their commitment under the ILWA. The ILWA does not, however, allow Imperial to place the pipeline, borrow pits, compressor stations or any other project facility or infrastructure site anywhere they want as long as it is within the pipeline study corridor. Such facility and infrastructure sites are still subject to review and approval by the affected Dehcho communities and in this case the proposed geotechnical investigation sites near the Blackwater River are unacceptable to the PKFN.

Sincerely,



Keyna Norwegian
Chief, Liidlii Kue First Nation
President, Dehgh Alliance Society



Davis Moses
Chief, Pehdzeh Ki First Nation
Board Member, Dehgh Alliance Society

c.c. Gabrielle Mackenzie-Scott
Chair, Mackenzie Valley Environmental Impact Review Board

David Livingstone
Director, Renewable Resources and Environment
Indian and Northern Affairs Canada

The Honourable Stephane Dion
Minister, Environment Canada

The Honourable Geoff Regan
Minister, Fisheries and Oceans Canada

The Honourable Michael Miltenberger
Minister, Environment and Natural Resources
Government of the Northwest Territories

Grand Chief Herb Norwegian
Dehcho First Nations

Dehgh Alliance Society
P.O. Box 256
Fort Simpson, NT X0E 0N0

Aug. 4, 2005

The Honourable Andy Scott
Minister of Indian and Northern Affairs Canada
10 Wellington Street
Hull, Quebec K1A 0H4

Re: Environmental Assessment of Imperial Oil's Dehcho Winter Geotechnical Program

On February 10, 2005, the Mackenzie Valley Environmental Impact Review Board (MVEIRB) issued its *Report of Environmental Assessment and Reasons for Decision on Imperial Oil Resources Ventures Ltd.'s Deh Cho Geotechnical Program (EA 03-009)*.

On June 17, 2005, you, as the Federal Minister and on behalf of the Responsible Ministers, sent a letter to the MVEIRB that initiated the "consult to modify" process under Section 130(1)(b)(ii) of the *MVRMA*.

The DAS is aware of how this "consult to modify" process has occurred for other environmental assessments in a closed, unfair manner that has excluded the full participation of the Dehcho communities.

The purpose of this letter is to inform you that the DAS expects that the Dehcho communities will be involved in all aspects of an open, fair and transparent post-Report of EA decision process. Specifically, the DAS expects that the Dehcho communities will be promptly copied on all correspondence and invited to participate in any meetings between representatives of the MVEIRB and the federal and territorial governments.

As well, Canada must meet its obligations under Article 4 of the Settlement Agreement recently signed by Canada and the Dehcho First Nations (DFN) to end the DFN's litigation in connection with the Joint Review Panel.

The DAS requests that you provide a prompt written response to this letter detailing how the "consult to modify" process for this EA will 1) be an open, fair and transparent process with full participation of the Dehcho communities and 2) meet Canada's obligations under Article 4 of the Settlement Agreement.

Sincerely,



Keyna Norwegian
Chief, Liidlii Kue First Nation
President, Dehgh Alliance Society



Davis Moses
Chief, Pehdzeh Ki First Nation
Board Member, Dehgh Alliance Society

c.c. Gabrielle Mackenzie-Scott
Chair, Mackenzie Valley Environmental Impact Review Board

Phone: (867) 695-3550
Fax: (867) 695-3890

Page 1 of 2

Dehgan Alliance Society
P.O. Box 256
Fort Simpson, NT X0E 0N0

David Livingstone
Director, Renewable Resources and Environment
Indian and Northern Affairs Canada

The Honourable Stephane Dion
Minister, Environment Canada

The Honourable Geoff Regan
Minister, Fisheries and Oceans Canada

The Honourable Michael Miltenberger
Minister, Environment and Natural Resources
Government of the Northwest Territories

Grand Chief Herb Norwegian
Dehcho First Nations